

Minutes
Personnel Policy Board
September 30, 2016
9:30 a.m.

Members Present: Ted Smith, Chair; Jim Grimley; Susan Hoffer; Hon. James Hovey; Petra Mandigo Hulm; Hon. Lisa Fair McEvers; and Carolyn Probst

Members Absent: Hon. James Hill

Others Present: Hon. Daniel El-Dweek
Kelly Hutton
Hon. Gary Lee
Jean Lindvig
Hon. Stacy Louser
Hon. Doug Mattson
Hon. Robin Schmidt
Hon. Kirsten Sjue
Sally Holewa, Ex Officio
Amy Klein, Staff
Renee Barnaby, Minutes

Chair Ted Smith called the meeting to order at 9:30 a.m.

Minutes

It was moved by Justice Lisa McEvers, seconded by Susan Hoffer, to approve the July 1, 2016 meeting minutes. The motion carried.

Electronic Court Recorder Training & Certification Review

Chair Smith said the Board received a request to review the AAERT certification requirements of electronic court recorder. The request includes possible modification of the job classification, suspension of the termination policy, or changing or reviewing the certification policy. He said the current requirements were initiated by the Supreme Court because of problems they were seeing in the transcripts being prepared for their use.

Justice McEvers stated that any decision made by the Board will only be in the form of a recommendation to the Supreme Court as the Board does not have that authority to make the changes.

Carolyn Probst said the largest concern out of Unit 4 and some of the other districts is the automatic termination within two years if the electronic court recorder does not gain full certification. It places a tremendous amount of pressure on the employee. She said that a majority of the certifications are happening on the employee's own time because the reality is

they do not have time to do it at work. Unit 4 is not suggesting the standards be lowered but instead providing more support and helping employees succeed rather than threatening them with termination.

In response to a question asking why two times have been set as the amount of times to take the test, Petra Hulm recalled in the past it was discussed that (1) if an employee cannot pass the test, they should not be performing the job so they were given two chances; and (2) within two years, the employee needs to be able to do the job or they should not be employed.

In response to a question asking how much it costs to take the test, Ms. Probst responded the first time it is \$125 and then \$95 thereafter.

Ms. Probst said while transcription is a very important part of the recorder's job, it is only one small portion of the duties. She questioned if the certification process is actually achieving a better product. She said if the product is subpar, there needs to be a better line of communication so those issues can be addressed.

Ms. Hulm suggested because transcripts are such an important part of a recorder's job duties, perhaps the district court could set up a process to review them before they are sent to the Supreme Court. She indicated the Supreme Court Clerk's Office does not have the resources to provide that feedback.

Justice McEvers clarified the court is not wanting to terminate employees, they just want a good record. She recalled recently in an oral argument that there was a transcript where the attorney was referencing who was speaking based on the information on the front of the transcript where it lists the parties, testimony and page numbers, and when the justice went to look at that page, it was not the person speaking. It took up communication time in court because the page in the front was not matching what was happening in the oral argument.

Ms. Hulm said if an employee in the Supreme Court Clerk's Office cannot do the duties of the job after six months, they are terminated. If an employee who after two years still cannot do facets of the job, they need to go on corrective action and potentially terminated.

Jim Grimley stated it is concerning that five of the seven employees that have taken the practical portion of the test have failed. He said the only two that passed it actually had a proctor in the room. He questioned if it was possible to request an in-person proctor for the practical piece or whether the practical piece should be eliminated as it is concerning that so many employees have failed.

Ms. Holewa indicated the transcript test was always part of the AAERT certification. However, in 2015, the practicum test was suspended because AAERT was in the process of moving from having an in-person proctor and using videotapes to putting it on-line and contracting with a third-party firm. That is when the majority of our existing employees took the test so they have

passed them both but it was not an actual practicum.

In response to a question asking why employees are waiting a year before taking the test, Susan Hoffer responded it is AAERT's standard that a person be a member for one year prior to being eligible to take the test.

Judge Mattson said as previously stated, the transcription is only one part of a recorder's job so it is not that simple to terminate someone who is not performing a small portion of their position. The practice in the Northwest District is to have a court reporter proofread the transcript before it is sent out and they have not received any feedback on errors. Without any feedback on errors, it seems difficult to determine if someone is not doing their job. Thus, the policy is like a sledgehammer solution in terms of loss of job and questioned how you can have corrective action if you are not getting that feedback.

Judge Hovey agreed that while the preparation of transcripts is vitally important, the reality is that on a day-to-day basis, it is very little of what court recorders are doing. The amount of recordings that are done versus the amount of transcripts that are prepared is a big difference. He said having a policy where there is an automatic termination because there is a failure of one portion of a certification seems to be extreme.

Justice McEvers recalled that part of the reason the certification process was implemented was because the court was not satisfied with the transcripts and the number of errors that they were seeing from electronic court recorders. She said the transcripts may be less important to the district court, but the Supreme Court relies heavily on them. While she is not against reviewing the certification process, she recalled it was the recorders themselves that recommended to adopt the AAERT test instead of making their own test.

In response to a question asking whether the North Dakota manual lists the word "esquire" as a reference to an attorney, Ms. Holewa responded while she has not read the manual since its creation, she does understand the word is part of the federal requirements of AAERT. The workgroup did know at the time the test was adopted that it was following the federal model. She said she is not particularly concerned if the court recorders put esquire after an attorney's name, but she is concerned when she sees things included in the transcript that were not on the tape and with some of the spelling and grammatical errors.

Judge Sjue stated she agrees with Judge Mattson's comments. She said it was suggested that anybody who has not been able to pass the practical portion of the AAERT test is not qualified to do their job and should therefore be terminated. She pointed out that two of the people who have failed the test are long-term, valued employees of the court system. In fact, one of them has been approached by AAERT as possibly becoming a grader so Judge Sjue wanted to push back a little on the idea that anybody who has not passed this test by definition cannot do their job.

Judge Lee requested that the policy be suspended immediately because the court system is losing

trained, skilled and valued recorders because of the meaningless certification requirement. He said his court recorder is an extremely capable and diligent person. She failed the test and he fears he is going to lose her because she cannot risk taking the test a second time and facing immediate termination if she fails. His second concern is after reviewing the testing scores, the reason that some of the people are failing is absurd. For example, they did not put the word “esquire” after the name of the attorney, which nobody does in North Dakota; or a word or two is outside the margin; or the “th” on a number is in superscript instead of regular script. These are arbitrary rules set up by a trade organization that have no application. When a transcript is completed, the real question should be whether or not it is a legible transcript of what happened not whether they capitalized clerk or bailiff. Judge Lee stated the rules for transcript preparation in North Dakota are found under the North Dakota Rules of Appellate Procedures, Rule 10. He suggested we should be grading the court recorders on those rules rather than a set of arbitrary rules.

Judge Lee added this certification process puts a disproportionate burden on the western part of the state and in the rural chambers because the pool of possible candidates is much shallower. In Unit 4, they are 4.5 judges short according to the weighted caseload study, which means they are also 4.5 court recorders/reporters short. They are working hard just to keep up and then they have the certification on top of it. He said from an economic stand point, it makes no sense to bring someone in every two years, train them, take them through this testing process, and then possibly lose them at the end of two years.

Kelly Hutton indicated she chairs the Digital Recording Workgroup. She said the workgroup is requesting the CET portion, or the transcript portion, of the certification be suspended and the proposed Transcript Practice & Quality Assurance plan be utilized instead. If the Board is unwilling to recommend suspension of the CET practical portion, the workgroup is requesting the time line for certification be increased from two years to three years.

Amy Klein explained that the Transcript Practice & Quality Assurance plan gives the security and assurance that court recorders are progressing as they should and by the time they reach the two year mark, they are preparing quality transcripts. If the court recorders are not making progress, it will be addressed early in the process. Through the plan, each recorder would transcribe a series of hearings and be certified by the recorder’s mentor, supervisor and court administrator before preparing official transcripts.

Ms. Holewa stated that performance reviews were implemented several years ago but some judges were putting excellent on everything and turning them in without comment. Because it was causing personnel problems if there was a termination, the court reporters and recorders were eliminated from the review process. Thus, a quality assurance plan will only work if the supervising judge and the presiding judge are willing to participate. With other employees, it is very structured. They get regular reviews, and there is a whole grid that the managers are going through on a regular basis making sure an employee is performing their job and that process is missing with some of our most valuable employees.

Ms. Probst suggested with the implementation of the proposed plan, we would see a greater performance level versus a drop dead result. She does not feel that we have provided the kind of support and internal structure needed for these employees. She indicated she is very comfortable working with the judges and relying on the mentor to identify the errors.

Jean Lindvig stated she is a member of the Digital Recording Workgroup and was also part of the group that did the original planning for the certification. She said she is one who has not passed the practical portion of the test after 22 years of employment and it is very mortifying, yet she is serving as a mentor to five of the recorders in her district. She is requesting that the workgroup be allowed to revisit this because no one anticipated what is taking place today. Also, AAERT is in the process of revising their test. She said they are very protective of their materials and that is why a recorder does not get to see any of the results because AAERT does not want anyone to have an upper hand on the test. She also indicated that the book study at home is not easy.

In response to a question asking Ms. Lindvig if she had a preference for using one of the two options presented today over the other, she indicated she would like to see the issue revisited and not proceed at this time. She said of the five recorders she is currently mentoring, three are in the process of testing with the written portion and two are trying to redo the practicum. She said it is very vital to them right here, right now.

Justice McEvers indicated she was not in favor of allowing people three years to gain the appropriate skills to do their job. She asked Ms. Klein if the Transcript Practice & Quality Assurance is ready and in place if the CET portion is suspended and an extension is given to the people who are already in the process. Ms. Klein responded the Transcript Practice & Quality Assurance is a 12-month program and would be ready for implementation in a relatively short amount of time.

Ms. Klein stated under the proposed plan, the mentor has a lot of increased responsibility. They review the employee's practice transcripts and meet and discuss the product with them and suggest whether or not the employee should move on to the next transcript. Each time a transcript is completed, the mentor would complete the Transcript Documentation and Release form which would document the things the recorder did correctly/incorrectly so the employee knows what they need to work on. The supervisor and court administrator would also review and sign the document.

It was suggested that it would be beneficial for both the supervising judge and the presiding judge to be involved in the process as well. The judges present at the meeting were asked if they would be willing to be involved in the process. Judge Lee, Judge Schmidt, Judge El-Dweek, and Judge Louser indicated they are willing to do anything necessary to assist the employees.

It was moved by Justice McEvers, seconded by Jim Grimley, that under the Electronic Court Recorder job classification, the time frame be suspended within which to obtain certification under the current AAERT program and allow for substitution of the

Transcript Practice & Quality Assurance for the CET certification as recommended by the Digital Recording Workgroup.

In response to a question asking how long the workgroup needs before the program could be implemented, Ms. Klein responded six months.

Justice McEvers asked the judges participating in the meeting if they felt this was an appropriate remedy. Judge Lee, Judge Schmidt, Judge El-Dweek, Judge Sjue and Judge Louser each indicated they were in favor of the motion.

In response to a question asking if the certification will have an influence on the pay grade, Ms. Klein responded it would not.

The motion carried and the recommendation will be forwarded to the Supreme court for consideration.

Ms. Holewa said since we are all aware that there is a pending recommendation to change the requirement that will go to the Supreme Court and that through no fault of the court recorders who might be affected, the court may not be able to get to that recommendation for awhile, she suggested that court administration take no action until the court has directed us to either proceed or to change course.

It was moved by Justice McEvers, seconded by Petra Hulm, to suspend the CET requirement out of both the Lead Court Reporter and Lead Electronic Court Reporter job classifications. The motion carried and will be forwarded to the Supreme Court for consideration.

Meeting adjourned.